IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26/03/2003

CORAM

THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM
and
THE HON'BLE MR. JUSTICE A.K. RAJAN

CRIMINAL APPEAL No.150 of 2000

Sakthivel .. Appellant

-Vs-

STATE, by Inspector of Police,
Eriodu Police Station,
Dindigul,
Dindigul District. .. Respondent

This appeal has been filed against the judgent dated 27.12.1999 in S.C.No.101 of 1999, delivered by the Additional Sessions Judge, Dindigul.

For Appellant : Mr.S.Senthilnathan

For Respondent : Mr. E.Raja, Addl.P.P.

:JUDGMENT

(The Judgent of the Court was delivered by A.K. RAJAN,J)

Sakthivel, the appellant herein has filed this appeal challenging the conviction under Sections 302 and 380 I.P.C. and sentence to undergo life iprisonent for the offence under Section 302 and seven years rigorous iprisonent for the offence under Section 380 I.P.C.
2. The appellant was residing in Raanathapura village in Eriodu Taluk in the adjacent house to that of the deceased Kanagavalli. P. W.1 Vijaya, Kanagavalli's daughter, is living in Trichy. Kanagavalli' s son by nae Gopinath, was blind; also he could not ove. P.W. 2 Rajeswari and P.W.3 Seethaal were the adjacent house owners. P.W.5 is the relative of the accused and she is also a neighbour. On 18.11.1998, at about 11.30 a.., P.W.1 received a telephone call fro P.W.6 Sundararaj inforing that Kanagavalli died. Iediately, P.W.1 cae to the village at 4.30 p.. and found that the deceased was kept in a sitting posture on a chair. P.W.7 daughter of P.W.1 also cae to the village and they were waiting for the arrival of the husband of P.W.1. He cae on the next day, viz., on 19.11.1998 and after his arrival, they wanted to bury the body and therefore, they started perforing the last rites in the house. In that process of washing the body, P.Ws.1 and 7 found injuries on the neck of the deceased as well as

on the hands and soe other parts of the body. Therefore, they grew suspicious on the cause of the death of the deceased and therefore, iediately, P.W.1 went to the police station at 3.00 p.. on 19.11.1998 and gave Ex.P.1 coplaint, to P.W.12 Inspector of Police. He registered a case under Section 174 Cr.P.C. as "suspicious death" and prepared Ex.P.8 first inforation report. Thereafter, P. W.12 went to the scene of occurrence at 4.00 p.. on the sae day and prepared Ex.P.2 observation ahazar and Ex.P.9 rough sketch. P.W.12 conducted inquest over the body of the deceased and Ex.P.10 is the inquest report.

3. P.W.10 the Doctor who conducted post-orte found six injuries on the body of the deceased, opined that the deceased would appear to have died of asphyxia due to throttling; Ex.P.6 is the postorte certificate. After the post-orte, P.W.12 Inspector of Police altered the case into 302 I.P.C. and proceeded with investigation. He exained P.Ws.1 to 5 and 7. While so, on 24.11.1998, the accused went to P.W.9 Village Adinistrative Officer and gave Ex.P.3, extra-judicial confession which was reduced to w riting; the accused also produced M.O.1 gold bangles, M.O.2 gold chain and M.O.2 cash of Rs.2 ,400/-. P.W.9 Village Adinistrative Officer took the accused along with the aterial objects to P.W.12 Inspector of Police. P.Ws.1 and 7 identified M.Os.1 to 3 as that of the deceased; P.W.12 arrested the accused and seized the aterials objects. After copleting the investigation, P.W.12 filed the charge-sheet.

4. The trial Court fraed the charges under Sections 302 and 380 I.P.C. To prove the charges, prosecution exained P.Ws.1 to 12, arked Exs.P.1 to P.12 and M.Os.1 to 5.

5. On the basis of the evidence on record, the trial Court found the accused guilty of charges under Sections 302 and 380 I.P.C. and sentenced hi to undergo life iprisonent and seven years rigorous iprisonent respectively. Against the conviction and sentence, this appeal has been filed.

6. Learned counsel for the appellant, Mr.S. Senthilnathan subitted that Ex.P.3 extra-judicial confession is inadissible in evidence, because when the accused said to have given confession, investigation has already coenced; therefore, recording of evidence by the Village Adinistrative Officer is hit by Rule 72 of the Criinal Rules of Practice. When the extra-judicial confession is inadissible, the recovery also is inadissible. Further, P.Ws.1 and 3 would adit that on 19.3.1998, they saw the accused in the custody of the police. Therefore, the evidence regarding the arrest of the accused is also falsified. For these reasons, the counsel for the appellant subitted, the conviction of the accused is not sustainable and he is entitled for acquittal.

7. The learned Additional Public Prosecutor subitted that even though investigation has already coenced and subsequent to that, the extra-judicial confession was recorded by a Village Adinistrative Officer, that does not becoe inadissible in evidence and in support of that, he cited a decision of the Division Bench of this Court in Valanjiya Chinnaal v. State (1987 Law Weekly (Criinal) 375).

8. We gave our careful consideration for the rival contentions of the counsel for the accused as well as the Public Prosecutor. We are unable to

accept the arguent of the Additional learned counsel for the appellant for the following reasons:
P.Ws. 2 and 3 clearly stated in their evidence that on the date of occurrence at about 9.00 a.., P.W.2 saw both the accused and P.W.5 in the house of the deceased and P.W.3 saw the accused while he was coing out of the house of the deceased and when she enquired about Kanagavalli, the accused replied that the deceased was lying in sofa. This evidence has not been challenged in the cross-exaination. P. W.5 has stated that he along with the accused were in the house of the deceased and the deceased gave pongal to P.W.5 and after eating that, he left the house.

9. A cobined reading of P.Ws.2, 3 and 5 would prove that it is the accused who was last seen with the deceased while she was alive. Within a short tie thereafter, P.W.2 cae to the house of the deceased and found the deceased lying on the sofa and iediately, she called P.Ws.3 and 4 and others and they found that Kanagavalli was dead. Thereafter, they infored P.W.6 who sent the essage to P.W.1. Fro this, it is proved that it is the accused who was in the copany of the deceased at the tie of occurrence. P.Ws.1 and 7 found the jewels issing only the next day and only thereafter, they gave a stateent regarding the issing of the jewels. On enquiry, P.W.12 Inspector of Police entertained suspicion against the accused Sakthivel and though he searched for the accused, he could not get hi, but on 24.11.1998, he cae to know that the accused appeared before the P.W.9 Village Adinistrative Officer and gave a confession and also produced M.Os.1 to 2 jewels and M.O.3 cash. M.Os.1 and 2 were identified by P.Ws.1 and 7 as that of the jewels worn by the deceased and P.W.7 also identified M.O.3 cash of Rs.2,40 0/- as that given by her to the deceased one week prior to the date of death. There is no reason to disbelieve this evidence. In Valanjiya Chinnaal v. State (1987 Law Weekly (Criinal) 375), where this Court followed an earlier decision in Sankayyan alias Sengodan, In re, Criinal Appeal No.640 of 1980 , it was observed as follows:

" On a careful exaination of R.72 of the Criinal Rules of Practice, it is not possible to state a confessional stateent recorded by a Village Magistrate after investigation has begun is illegal or inadissible in evidence, though the weight to be attached to the sae ay be a relevant question for consideration on the facts and circustances of each case. " Therefore, the extra-judicial confession given by the accused to P.W.9, though was subsequent to the beginning of investigation is not inadissible in evidence, only its evidentiary value is reduced. Therefore, Ex.P.3 is adissible in evidence.
10. On a perusal of Ex.P.3 extra-judicial confession, it is seen that inute details had been given by the accused which were only to the exclusive knowledge of the accused; it cannot be said that the sae would have been written by the Village Adinistrative Officer hiself. Therefore, it proves that the confession was true and voluntary. This also corroborates the evidence of P.Ws.2, 3 and 5 in other aspects. The evidence of P.Ws.2, 3 and 5 together with Ex.P.3 and the recovery of jewels fro the accused, proves beyond reasonable doubt that it is the accused who had coitted the urder of Kanagavalli and after urdering her, he had reoved the jewels fro her body. Therefore, the prosecution has proved the charges beyond reasonable doubt.

10. The trial Court has also coe to the correct conclusion and found the charges proved. There is no reason to interfere with the judgent of the trial Court. Therefore, the appeal is disissed confiring the conviction and sentence iposed on the appellant/accused.

Index: Yes
Web Site: Yes
vs

TO:

1) The Additional Sessions Judge, Dindigul

2) The Principal Sessions Judge, Dindigul

3) The Superintendent, Central Prison, Trichy

4) The Superintendent, Central Prison, Sale

5) The Public Prosecutor, High Court, Madras

6) The Inspector of Police,
Erode Police Station,
Dindigul District.

7) The District Collector, Dindigul

8) The Director General of Police, Chennai.

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